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*Attorneys for Defendant The Kroger  
 Company dba Smith's Food and Drug*

**IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA**

Rosemary Sommer, individually,  
  
 Plaintiff,  
  
 v.

Case No.  
  
 (Arizona Superior Court, Mohave County,  
 Case No. S8015CV202200271)

The Kroger Company dba Smith's Food  
 and Drug, a foreign corporation; John  
 Does I-X and Jane Does I-X, individually  
 and/or as Husband and Wife; Black  
 Corporations I-X and White Limited  
 Partnerships IX,  
  
 Defendants.

**NOTICE OF REMOVAL**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT OF THE  
 DISTRICT OF ARIZONA:**

PLEASE TAKE NOTICE that Defendant The Kroger Company dba Smith's Food  
 and Drug ("Defendant"), by and through undersigned counsel, hereby removes this state  
 court action described below from the Superior Court of the State of Arizona in and for the  
 County of Mohave to this United States District Court for the District of Arizona pursuant  
 to 28 U.S.C. §§ 1332(a), 1441(a)-(b) and 1446, Rule 11 of the Federal Rules of Civil  
 Procedure, and D. Ariz. LRCiv 3.6. Defendant provides the following "short and plain  
 statement of the grounds of removal" pursuant to 28 U.S.C. § 1446(a).

**BASIS FOR REMOVAL TO FEDERAL COURT**

1  
2 1. On March 18, 2022, Plaintiff Rosemary Sommer (“Plaintiff”) filed a  
3 Complaint entitled *Rosemary Sommer v. The Kroger Company dba Smith’s Food and Drug,*  
4 *a foreign corporation; John Does I-X and Jane Does I-X, individually and/or as Husband*  
5 *and Wife; Black Corporations I-X and White Limited Partnerships IX*, Case No.  
6 S8015CV202200271, in the Superior Court of the State of Arizona in and for the County of  
7 Mohave.

8  
9 2. Pursuant to 28 U.S.C. § 1446(a) and LRCiv 3.6(b), true and correct copies of  
10 the pleadings served on Defendant filed in the State Court Action are attached hereto as  
11 **Exhibit A.**

12 3. Defendant was served on April 4, 2022.

13 4. The State Court Action is removable under 28 U.S.C. § 1332(a)(1) and may  
14 be removed under 28 U.S.C. § 1441(b).

15 5. Plaintiff is, and at all relevant times was, a resident of Arizona. *See Exhibit*  
16 **A**, Complaint ¶ 1.

17 6. Defendant is, and at all relevant times was, incorporated in Ohio, with a  
18 principal place of business in Ohio.

19 7. As Plaintiff is, and was at the time she filed the Complaint, a citizen of the  
20 State of Arizona, and Defendant is, and was at the time Plaintiff filed the Complaint, a citizen  
21 of Ohio, diversity of citizenship exists between the parties.

22 8. Plaintiff asserts that this case falls under Discovery Tier 3. *See Exhibit A*,  
23 Complaint. Pursuant to Rule 26.2(c)(3)(C) of the Arizona Rules of Civil Procedure,  
24 Discovery Tier 3 is appropriate for actions claiming \$300,000.00 or more in damages.

25 9. Plaintiff’s Complaint does not contradict the appropriateness of Discovery  
26 Tier 3 and alleges past and future medical treatment, loss of earnings and future loss of  
27  
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1 earnings, permanent impairment, general damages, attorney's fees, and costs.

2 10. Based on undersigned counsel's experience defending cases involving  
3 negligence and premises liability for 20 years, and Plaintiff's concession that she seeks at  
4 least \$300,000 in damages in this case (Tier 3), it is facially evident that Plaintiff has placed  
5 an amount in excess of \$75,000 in controversy, exclusive of interest and costs.

6 11. Removal to this Court is appropriate because this action is within the Court's  
7 original jurisdiction pursuant to 28 U.S.C. 1332, by reason of the diversity of citizenship of  
8 the parties and the amount in controversy.

9 12. Venue is proper. Plaintiff filed the State Court action in the Superior Court of  
10 the State of Arizona in and for the County of Mohave. Venue, therefore, properly lies in the  
11 United States District Court for the District of Arizona pursuant to 28 U.S.C. § 1441(a).

12 13. This Notice of Removal is being filed within thirty (30) days after receipt of  
13 the initial pleading setting forth the claim for relief in this action, and the time for filing this  
14 Notice of Removal pursuant to 28 U.S.C. 1446(b) has not expired.

15 14. By removing this matter to this Court, Defendant does not waive any available  
16 defenses, nor does Defendant admit any allegations made in the State Court Action.

17 15. A copy of this Notice of Removal is being served on Plaintiff's attorney and is  
18 being filed with the Clerk of the Arizona State Court, County of Maricopa.

19 16. This Notice of Removal is signed pursuant to Rule 11, Federal Rules of Civil  
20 Procedure, in accordance with 28 U.S.C. § 1446(a) and LRCiv 3.6(a).

21 17. The undersigned certifies to the best of the undersigned's knowledge,  
22 information, and belief, formed after reasonable inquiry, that Defendant's factual allegations  
23 have evidentiary support and its legal contentions are warranted by existing law. The  
24 undersigned also certifies that this Notice of Removal is not presented for any improper  
25 purpose, such as to harass or cause unnecessary delay or needless increase in the cost of  
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27  
28

1 litigation.

2 WHEREFORE, Defendant gives notice that the above action is hereby removed in  
3 its entirety to this Federal Court, and respectfully requests that this action be placed on the  
4 docket of this Court for further proceedings as though it had originally been instituted in this  
5 Court.

6 DATED: May 3, 2022

**ZELMS ERLICH & MACK**

7  
8  
9 By: s/ Robert B. Zelms

10 Robert B. Zelms

11 Emily C. Cunion

12 *Attorneys for Defendant The Kroger Company*  
13 *dba Smith's Food and Drug*

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on this 3<sup>rd</sup> day of May, 2022, I electronically filed the foregoing,  
16 using the CM/ECF system, which serves CM/ECF participants and emailed courtesy copies  
17 to:

18 Krystal A. Flores  
19 Morgan & Morgan Arizona, PLLC  
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*Attorneys for Plaintiff*

23  
24 s/ Julie Rawlings